HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1118/2003 (S/S)
Chandan Singh Bisht
Vs
C.M.O.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 11.5.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1118 (SS) of 2003

Chandan Singh Bisht …….. Petitioners

Versus

Chief Medical Officer, Nainital & others ……. Respondents

Sri Sharad Sharma, Advocate for the petitioner
Standing Counsel for the respondents.

Dated:-11.5. 2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ of mandamus directing the respondents to pay to the petitioner G.P.F. due to him paid to him after attaining the age of superannuation and to refix the post retirement benefits after its rightful calculation.

Briefly stated that the petitioner was initially appointed with the respondents in 1961 as House Visitor in the department of Malaria. By the passage of time the department of malaria no more existed and consequent thereof the petitioner was transferred to

the Family Planning Department in 1967. lastly at the time when the petitioner attained the age of superannuation on 30.11.1997, the petitioner was working as Health Supervisor in Samudayik Swasth Kendra, Vetalghat. The petitioner has stated that despite his retirement in the year 1997, he has not been paid the outstanding amount in his G.P. Fund account. He has also stated that the pensionary benefits settled by the respondents has been made on a wrongful calculation and the total amount payable to the petitioner by way of the pension has been reduced considerably. The petitioner has further stated that when the respondents have not paid any heed to the several requests made by the petitioner, he drew the attention of the pension court for redressal of his grievance. The respondents after putting in appearance before the pension Court had given an undertaking that the entire amount payable to the petitioner will be disbursed within a month from the date of the proceedings put even then no amount has been paid to him. The petitioner has further submitted that he has filed representations on 28.2.2000, 10.5.2001, 20.9.2001, 21.11.2001, 16.10.2001, 29.12.2001, 29.5.2002, 22.11.2002 and 20.1.2003 but despite repeated representations of the petitioner no reply has been received from the side of the respondents.

In the case 1985 (1) S.C.C. State of Kerala and other Vs. M. Padmanabhan Nair the Hon'ble Supreme Court has held that pension is a valuable right and property and the petitioner has a right to claim by virtue of the continuous services rendered by him. The observations of the Apex Court are quoted below:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

The aforesaid judgment of the Apex Court has also been followed in JT 1999 (2) SC 359 Dr. Uma Agarwal Vs. State of U.P. & another and has held as under: -

"Now-a-days several writ petitions are being filed in this court and various High Courts seeking relief for disbursement, of retrial benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer J. stated in State of Mysore Vs. C.R. Sheshadri & others (1974)(4) S.C.C. 308), a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant- not unusual in government, it is becoming necessary to issue

directions, in several cases, for early payment of these dues. In yet another case in State of Kerala and others Vs. M. Padmanabhan Nair (1985) (1) SCC 429 this Court had occasion to point out that usually 'the delay occurs by reason of non-production of the L.P.C. (Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C.(no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

In R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and another, reported in (1994) 6 Supreme

Court Cases 589 the Apex Court after relying the judgment of the Apex Court in State of Kerala Vs. Padmanabhan Nair 1985 (1) S.C.C. Page 429, had held as under:-

"8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala Vs. M. Padmanabhan Nair. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

…….…

10. this Court in M. Padmanabhan Nair case has held as under:-

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

In view of the aforesaid, retirement benefits admissible to the petitioner cannot be withheld by the respondents.

The writ petition is allowed. A writ of mandamus is issued directing the respondents to refix and pay the retirement benefits to the petitioner after its rightful calculation with interest @ 6% per annum and also to pay him outstanding amount of G.P. Fund, within six weeks after filing of the certified copy of this order.

There will no order as to costs.

11.05.2004 **Rajesh Tandon, J.**
Dhyani